

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of:)	
)	
ReconRobotics, Inc.,)	
)	WP Docket No. 08-63
Request for Waiver of Part 90 of the)	
Commission's Rules for a Video and Audio)	
<u>Surveillance System at 430-450 MHz.</u>)	

To the Commission:

**SUPERSEDING FIRST AMENDED
SUGGESTIONS IN SUPPORT OF MOTION TO SET ASIDE;
SUGGESTIONS IN SUPPORT OF MOTION FOR SUMMARY DECISION**

COMES NOW movant, JAMES EDWIN WHEDBEE, who in addition to his previous suggestions, which were illustrative rather than legally-controlling, respectfully suggests, in addition thereto, the following case law as legally-controlling in the above-captioned proceeding, and superseding to the extent any case law below conflicts with his previously submitted suggestion, all in support of his motion to set aside and for summary decision:

[1] AS TO PERMISSIBILITY OF MOVANT'S MOTION TO SET ASIDE

CITATION: ALBERTSON v. FEDERAL COMMUNICATIONS COMMISSION (DUNKIRK BROADCASTING CORPORATION, Intervenor), No. 10305: UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT; 182 F.2d 397; 87 U.S. App. D.C. 39; 1950 U.S. App. LEXIS 2824; February 3, 1950, Argued; May 22, 1950, Decided.

HELD, IN PERTINENT PART: “[*400] Contrary to its present position, the Commission has clearly recognized [**7] its inherent authority to reconsider previous action taken by it. Rule 1.726(c) provides that the Commission 'may on its own **motion set aside** any action made or taken by it within

20 days.' Needless to say, if it can set aside its action, the power to do so is not restrained by the words of the rule which refer only to action taken on its own motion. The authority is not derived from the rule but from the implied powers arising out of the Act. **Therefore, if it may, as it undoubtedly can, reconsider previous action and set the same aside on its own motion, there is nothing to preclude it from doing so upon the motion of an interested party.** Cf. *Sprague v. Woll*, 7 Cir., 1941; 122 F.2d 128, 130. For these reasons we are not impressed by the argument that the Commission lacked express statutory or administrative authority to reconsider its order dismissing Albertson's application for rehearing. *Braniff Airways v. Civil Aeronautics Board*, 1945, 79 U.S.App.D.C. 341, 147 F.2d 152.”

[2] AS TO GRANT OF 'WAIVER' BEING ARBITRARY AND CAPRICIOUS

CITATION: FEDERAL COMMUNICATIONS COMMISSION, et al., Petitioners v. FOX TELEVISION STATIONS, INC., et al., No. 07-582, SUPREME COURT OF THE UNITED STATES; 129 S. Ct. 1800; 173 L. Ed. 2d 738; 2009 U.S. LEXIS 3297; 37 Media L. Rep. 1577; 47 Comm. Reg. (P & F) 933; November 4, 2008, Argued; April 28, 2009, Decided.

HELD, IN PERTINENT PART: In a case regarding indecency, the Court found FCC ignored prior rules and regulations in holding, that: **“An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books.** See *United States v. Nixon*, 418 U.S. 683, 696, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974).”

[3] AS TO CONSTRUING A DOCUMENT TO BE SOMETHING ELSE

CITATION: CALIFORNIA METRO MOBILE COMMUNICATIONS, INC., APPELLANT v. FEDERAL COMMUNICATIONS COMMISSION, APPELLEE, No. 02-1370, UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT; 365 F.3d 38; 361 U.S. App.

D.C. 126; 2004 U.S. App. LEXIS 8044; 32 Comm. Reg. (P & F) 386; November 20, 2003, Argued; April 23, 2004, Decided.

HELD, IN PERTINENT PART: “**We see nothing impermissible, however, in the Commission's treating it as an informal request for action.** See 47 C.F.R. § 1.41(a); see *JPJ Elec. Communications, Inc., For Reconsideration of Dismissal of Informal Request to Modify Station KNNQ312, Licensed to the Town of Clay, New York, Order on Reconsideration*, 16 FCC Rcd 2902, 2904 (Div. 2001) (addressing petition for modification filed outside time for petition for reconsideration under section 1.41)”

[4] SUMMARY

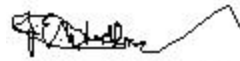
The foregoing considered, the Motion to Set Aside is properly interposed; is a separate pleading apart from a Petition for Reconsideration; the Motion correctly suggests the Commission's duty to construe an improperly denominated pleading/paper/request to be that which it seeks to effectuate; and, the Motion correctly asserts that it is arbitrary and capricious for the Commission to neglect these duties as well as its own prior rules and regulations going against the grant of the 'waiver' against which movant's Motion to Set Aside lies. Moreover, in the case law above, even if the Motion to Set Aside is treated as an out-of-time Petition for Reconsideration, the Commission is free to treat it as an informal request for action (moving the FCC to set aside the 'waiver'), and grant it just the same.

For these reasons, and those readily apparent herefrom, a grant of the Motions to Set Aside and for Summary Decision would be in the public interest, convenience, and necessity; therefore, the movant is entitled to grant of the Motion to Set Aside as well as the Motion for Summary Decision.

WHEREFORE, movant prays the Commission's Order consistent herewith setting aside and

vacating its 'waiver' order, construing the application therefor as correctly a petition for rulemaking, and reinstating proceedings consistent with the Commission's established procedures governing petitions for rulemaking (47 CFR Section 1.411), and for such other and further relief as shall be consistent herewith.

Respectfully submitted:



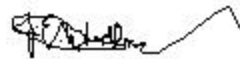
James E. Whedbee, M.Ed.
SBE #26971

September 5, 2010

James Edwin Whedbee, M.Ed.
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816.694.5913
Movant

MOVANT'S AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY DECISION

THIS CERTIFIES under penalties provided for perjury, pursuant to 18 USC 1001, that the undersigned obtained the within and foregoing citations from Lexis-Nexis research service; that undersigned is licensee of radio station N0ECN, a party in interest in the above-captioned proceedings; and, that the undersigned calculates the 'waiver' against which his motion(s) lie shall cause damage to radio station, N0ECN, by way of radio frequency interference due to use of frequencies corresponding within the 'waiver' with those of radio station, N0ECN. FURTHER THE AFFIANT SAYETH NOT. Witness my hand this 5th of September, 2010.

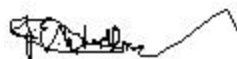


James E. Whedbee, M.Ed.
SBE #26971

CERTIFICATE OF SERVICE

THIS CERTIFIES that on this 5th day of September, 2010, an exact copy of the within and foregoing suggestions was e-mailed to parties whose names, addresses, and e-mail addresses follow this certification.

Signed:



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